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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JUSTIN R. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

R.R.,

Defendant and Appellant.

D053760

(Super. Ct. No. SJ11766B-D)

APPEAL from judgments of the Superior Court of San Diego County, George W. Clarke, Judge. Affirmed.

R.R. appeals judgments removing his children from his custody under Welfare and Institutions Code section 361.5, subdivision (c). (Further statutory references are to the Welfare and Institutions Code.) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

R.R. is the father of Justin R., Jade R. and J.R., who are now ages 11, eight and four years, respectively (together, children). R.R. is the stepfather of John, who is now 16 years old. The children's mother does not appeal. The history of the case is detailed in *In re Justin R.* (Dec. 27, 2007, D0511290 [nonpub. opn.] (*Justin R.*)).

On January 22, 2007, after 13-year-old John returned home intoxicated, R.R. became angry and hit him in the head and mouth and kicked him in the stomach and face in the children's presence. John struck R.R., who then put him into a headlock for three to five minutes. John lost consciousness and was hospitalized overnight. John had an abrasion and ecchymosis on his neck, a contusion in the midline of his head and other abrasions.

The San Diego County Health and Human Services Agency (Agency) filed section 300 petitions on behalf of John and the children, alleging they were at risk of harm due to R.R.'s physical abuse of John. On May 21, 2007, the court sustained John's petition and ordered a plan of family reunification services. The court dismissed the children's petitions and ordered their return to parental custody. The children appealed. This court reversed the dismissal orders and directed the court to enter findings of jurisdiction under section 300, subdivisions (b) and (j), and to hold a disposition hearing in the children's cases. (*Justin R.*)

A contested disposition hearing was held on July 25 and September 10, 2008. The court received in evidence the Agency's reports dated April 5, 2007, March 3 and 25,

May 16, and July 2 and 17, 2008, and heard testimony from John, R.R., the social worker and Ruby H., the children's caregiver and paternal aunt (Aunt).

After the court dismissed the petitions filed on behalf of the children, they lived with R.R. In November 2007 R.R. was deployed at sea with the United States Navy for approximately six months. He made arrangements for relatives to care for the children. Before his deployment, R.R. completed a parenting class and an anger management program through the Navy Family Advocacy Program. He did not participate in individual therapy, which was part of his court-ordered case plan for John. In June 2008 after R.R. returned, the social worker gave him referrals to four therapists. R.R. did not contact the social worker to begin therapy.

The social worker recommended the court remove the children from parental custody and order a plan of reunification services for R.R. R.R. minimized the incident with John, which occurred after he completed a 52-week domestic violence program, and he resisted participating in therapy. The children would remain at high risk until R.R. accepted full responsibility for his use of excessive force while disciplining John. He also needed to demonstrate insight into the effects of his out-of-control behavior on the children.

R.R. testified he did not participate in individual therapy in John's case because John did not want to reunify with him. He did not need therapy to parent the other children; he cared for them by himself until he was deployed in November 2007. Aunt and R.R.'s mother helped with childcare when he worked. The children were doing well in school and were smart, well-behaved and disciplined.

Aunt testified R.R.'s interactions with his children were appropriate, loving, caring and supportive, and the children reacted positively to him. They were good kids but needed to be disciplined for misbehavior approximately once every two weeks. R.R. saw the children almost everyday after work for three or four hours.

The court adopted the Agency's recommendations set forth in the social worker's report of July 2, 2008. The court removed the children from parental custody under section 361, subdivision (c)(1), and ordered a plan of reunification services.

DISCUSSION

R.R. contends the court erred when it removed the children from his custody. He asserts insufficient evidence supports the findings the children were at risk of harm and there were no reasonable means to protect the children's physical health in his care. R.R. acknowledges he used poor judgment with John but argues he completed parenting and anger management programs, maintained good relationships with the children and had extended support through his family. R.R. asserts the court did not consider alternatives to removal.

The Agency maintains the removal order is supported by substantial evidence.

At the disposition hearing, the court cannot remove a dependent child from the home unless there is clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being, and there are no reasonable means to protect the child's physical health without removing the child from parental custody. (§ 361, subd. (c)(1); *In re Henry V.* (2004) 119 Cal.App.4th 522, 528; *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288.)

We review the trial court's findings for substantial evidence. We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence. The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

The court may consider a parent's past conduct as well as his or her current circumstances when it determines whether a child may be safely maintained in parental custody. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) Here, R.R.'s use of physical force against John was excessive. John suffered injuries to his neck and head and was hospitalized overnight for observation. R.R. had a history of domestic violence against the children's mother, including a criminal conviction.

While John's intoxication and the mother's methamphetamine use may have contributed to household violence, the court could draw a reasonable inference that R.R. had a tendency to lose his temper when confronted with a situation he could not control, and once angry, R.R. reacted violently. The record also shows R.R. physically abused John after he completed a 52-week domestic violence program in which he had learned "to control his anger and listen." The social worker opined that there was a high risk of emotional and physical harm to the children in view of R.R.'s history of violence, reluctance to participate in individual therapy, quick temper and lack of insight into protective issues with respect to John and the children.

We acknowledge the record shows that R.R. has positive relationships with the children and he appears to have the capability to adequately care and provide for them. The court may have reached a different decision had it believed other evidence. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.) However, R.R.'s past violent acts, if repeated, presented a high level of risk to the children's well-being, including their physical safety. Here, the court could reasonably conclude that R.R. needed to demonstrate significant progress before he could safely parent the children and, absent demonstrated progress, there were no reasonable alternatives to removal. On this record we must conclude there is substantial evidence to support the court's determination there was a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being and there were no reasonable means to protect the children's physical health without removal from parental custody. (§ 361, subd. (c)(1).)

DISPOSITION

The judgments are affirmed.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

McDONALD, J.